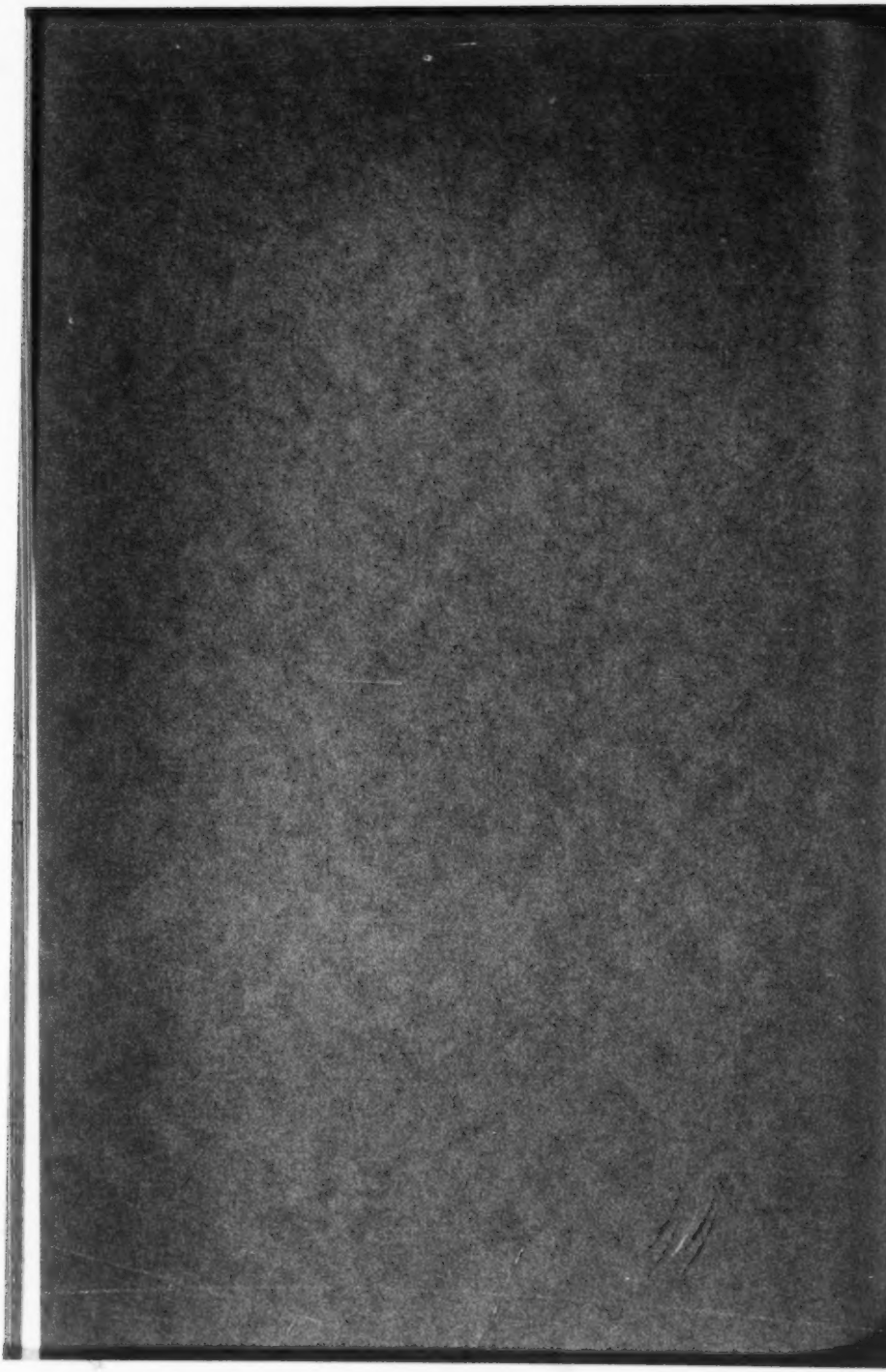

APPENDIX A—Treasury Decision 19363

Treasury Department, May 20, 1898.

Sir: This Department is in receipt of your communication, dated the 29th ultimo, relative to certain craft plying across the boundary of the United States and British Columbia.

It appears to the Department that such craft are covered by the provisions of sec. 3098 of the Revised Statutes and of sec. 3109 as amended by the act of February 17, 1898, sec. 4 [TD 19011]. The law may also be applied to the sleds and other vehicles you mention as passing across the line between the Territory and British Columbia.

Touching the fees to which you refer, your attention is invited to sec. 4382 of the Revised Statutes, and to chapter 30, Regulations, 1892.

The undocumented scows you mention as being towed up the coast from British Columbia, with lumber, etc., can trade only subject to the regulations applying to other vessels under similar circumstances, and to alien as well as other tonnage duties. Their tonnage must be ascertained in the usual manner; manifests of their cargo should be produced, and the vessels should be entered and cleared, and pay fees, as prescribed by law. See "entries of vessels," etc., Cir. Oct. 11, 1890 [TD 10275].

Respectfully yours

O. L. Spaulding

Assistant Secretary

Collector of Customs, Sitka, Alaska.

APPENDIX B—Statutes and treaties relative to the sea:

The following subject headings do not always indicate the full purview of the statutes reviewed, but may be helpful.

1) **Customs**: RS 2584-5 and 2588-90 were enacted in 1870-1, and are therefore contemporaneous with RS 4382. They appear in Revised Statutes under title 34, "collection on duties." They are summarized below:

a) RS 2584: "Coming from or going to *sea*" is used with reference to the ports of Vallejo and San Francisco, with the implication that high sea was meant, to the exclusion of San Francisco Bay and other extensive tidal waters between Golden Gate and Vallejo.

b) RS 2585: Same phraseology and implications with respect to the salt-water ports of Eureka and Wilmington, California.

c) RS 2588-90: Six references to "sea," connoting high sea in distinction from Columbia River along its extensive tidal reaches between Astoria and Portland, including the broad mouth of that great stream as it discharges into the Pacific.

2) **Customs**: Tariff act of 1930, 19 USC 1483: This is the latest general customs revision, and provides:

> The salvors of merchandise saved from a wreck *at sea* or on or along a coast of the United States may be regarded as the consignees.

"At sea" obviously refers to high sea. This provision originated in sec. 483, tariff act of 1922, 42 Stat. 959.

3) **Fisheries**: Treaties with Great Britain, November 30, 1782, and September 3, 1783, 8 Stat. 56, 82 (before adoption of the Constitution): Article 3 in each treaty refers to fisheries on various banks and "other places *in the sea*," as well as on "coasts, bays and creeks." This distinction shows that in those early days "sea" did not include territorial waters.

4) **Frontier waters and navigation from sea**: Treaty with Great Britain, November 19, 1794, 8 Stat. 117: Article 3 gave each country the right "to navigate all the lakes, rivers, and waters" of the other, except into British "sea-ports, harbors, bays, or creeks," and into "such ports of the (British) rivers as are between the mouth thereof and the highest port of entry *from* the *sea*, except . . . between Montreal and Quebec." And British vessels "*from the sea*" were not admissible "into the rivers of the United States beyond the highest ports of entry for foreign vessels *from the sea*," excepting the Mississippi River. This careful specification of lakes, rivers, waters, sea-ports, harbors, bays, creeks, river ports, mouths of rivers, and "foreign vessels *from the sea*," shows clearly the understanding of treaty-makers that "sea" meant high sea.

5) **Customs—sea and boundary trade**: Act of Mar. 2, 1799, c. secs. 92, 104-6, 1 Stat. 622, 697, 701-2: British subjects were permitted to freely navigate "lakes, rivers and waters" of the United States, but the statute was not to:

> Be construed to justify admission of British vessels *from the sea* into the rivers of the United States,

> beyond the highest ports of entry for foreign vessels *from the sea.*

Also, importation "in any other manner than *by sea*" and exportation "otherwise than *by sea*" were prohibited, except that importation into boundary districts were allowed "in like manner" as for "merchandise imported into the United States, in vessels *from the sea.*" The verbal similarity of this statute and the treaty of 1794, supra, indicates the same distinction between territorial waters and those connoted by the expressions "*from the sea*" and "*by sea.*"

6) **Customs—sea trade**: Acts of July 31, 1789, c. 5, sec. 29, 1 Stat. 44, 48, and Aug. 4, 1790, c. 35, sec. 70, 1 Stat. 145, 177. These statutes had prohibited importation "in any other manner than *by sea*," and were superseded by above-mentioned treaty of 1794 and act of 1799. Presumably all three acts and the treaty used the term "sea" consistently, and nothing in their context indicates any sense other than that of high sea.

7) **Customs—sea trade**: Act of Feb. 22, 1805, c. 18, sec. 1, 2 Stat. 315; provided that:

> Merchandise imported *by sea* into the United States from all foreign ports and islands lying north of the equator, and situated on the eastern shore of America, or in its *adjacent seas,* bays, and gulfs.

As in contemporaneous statutes and treaties above-mentioned, "by sea" obviously refers to high sea; and "adjacent seas" would refer to offshore waters.

8) **Offshore fisheries in Canadian and American waters**: Treaty of Washington, May 8, 1871, arts. 18-9, 17 Stat.

869-70: Confirms the right to take fish on the "sea-coasts and shores, *and* in the bays, harbors, and creeks" of the Canadian maritime provinces and the eastern coast of the United States. Here the negotiators of the treaty showed the understanding that "bays, harbors, and creeks" are not included in "sea-coasts and shores." This is emphasized by the limitation of this right "solely to the *sea* fishery," and excluding "all other fisheries in rivers and the mouths of rivers."

9) **Imports via Canadian river:**

a) Treaty of Washington, art. 31, 17 Stat. 874: Refers to lumber from northern Maine, "floated down the (Saint John) River *to the sea,*" meaning high sea, as indicated in the next item below.

b) RS 4347, enacted Mar. 3, 1873: Supplements above-mentioned treaty by expanding quoted phrase, so that it reads "*to the sea,* when the same (lumber) is shipped to the United States from the province of New Brunswick." The "sea" referred to in treaty and act is Bay of Fundy, which is high sea.

10) **Customs—international rivers**: Treaty of Washington, art. 26, 17 Stat. 872: Relates in part to American and British "navigation of the rivers Yukon, Porcupine, and Stikine ascending and descending from, to, and into the sea." These are international streams. The Porcupine is tributary to the Yukon, which enters the ocean several hundred miles above the Alaska peninsula, and the Stikine runs across the Alaska panhandle to the ocean. Therefore Alaskan commerce is involved, and the contemplated foreign commerce "from, to, and into the sea" would be over

high sea, going or coming, because the treaty obviously relates to high-sea traffic. This is confirmed by the complementary act of 1898, infra.

11) **Same subject**: Act of Feb. 17, 1898, c. 26, 30 Stat. 248: Sec. 3 authorized Treasury regulations:

> Whenever merchandise is imported into the United States *by sea* for immediate exportation to a foreign port *by sea*, or by a river, the right to ascend or descend which for the purposes of commerce is secured by treaty to the citizens of the United States and the subjects of a foreign power.

The inference from this provision is the same as from like language in the treaty just mentioned, and is confirmed by the provision in sec. 4 that without a customs permit:

> Any foreign vessel . . . arriving, whether *by sea or otherwise* in the waters of the United States, from any foreign territory adjacent to the . . . northwestern frontiers . . . shall not proceed *further inland.*

Traffic arriving by high sea would be covered by the expression "by sea." If over inland waters, it would be covered by the word "otherwise." The phrase "further inland" points to the same meaning. "Foreign territory adjacent to the . . . northwestern frontiers" would extend as far as Victoria, on Vancouver Island. *The Coquitlam* (DC Alaska 1893) 57 F. 706; reversed on other grounds, 77 F. 744.

12) **Fisheries "at sea"**: Acts of February 16, 1792, c. 1 Stat. 230-1; July 29, 1813, c. 3 Stat. 50-1; March 3, 1819, c. 3 Stat. 520: These three acts regulated fisheries "*at sea,*" and provided a bounty for fish caught "*at sea,*"

and in *The Harriet,* 11 F. Cas. 588, Mr. Justice Story held that "sea" meant waters outside the headlands and did not include those of a port or harbor.

13) **Crimes at sea:** Act of Sept. 24, 1789, c. 20, sec. 9, 1 Stat. 73, 76: Gave jurisdiction (1) over crimes committed "upon the high seas"; (2) over seizures made "on waters which are navigable *from the sea* . . . as well as upon the *high seas,* and (3) over "seizures on . . . other waters than as aforesaid." Here "sea" and "high seas" are used synonymously.

14) **Same subject:** Act of April 30, 1790, 1 Stat. 114: Refers to crimes committed on "the high seas," "the land or seas," "the land or the sea," and on "the land or at sea." Here again "sea" means high sea.

15) **Piracy and slavery at sea:** RS 5377, 5379 and 5384: These three statutes contain the expressions "from sea" and "upon the seas," relating to slavery and piracy, which apparently are used the same sense as in the acts of 1789 and 1790, supra.

16) **Domestic navigation:** RS 4221, relating to "vessels in "domestic commerce," prescribes procedure if the license of a vessel expires "at sea." This evidently means high sea.

17) **Mississippi navigation:** 33 USC 2 refers to "the outer or *sea* ends of the jetties at the entrance from the Gulf of Mexico" into "passes of the Mississippi." This means external waters.

18) **Shipping—seamen:** 46 USC supp. 672-2, enacted July 8, 1941, relates to service "*at sea* or on the Great Lakes or on the bays and sounds connected directly with

the seas." This indicates that the present Congress would not regard service on inclosed waters of the northwestern frontier as "at sea," but as on "bays and sounds connected directly with the seas."

19) **Shipping—seagoing barges**: 46 USC supp. 672b-1 uses the same language with reference to seamen on seagoing barges, and with the same apparent significance.

20) **Navigation—load line**: 46 USC 88 relates to the load line on vessels "proceeding *to sea* . . . for a coastwise voyage *by sea.*" Being for "coastwise" voyages, it has no application to the foreign trade involved in this case, except as an analogous "sea" statute which implies navigation subject to hazards of high sea. Such hazards do not exist in the sheltered waters of the Washington-Alaska-British Columbia regions, *in which ordinarily a vessel would usually be keeping away from high sea rather than approaching it.*

21) **Collisions at sea and on inland waters**: Act of Aug. 19, 1890, c. 802, sec. 1, 26 Stat. 320, provided in effect that regulations for preventing collisions "at sea" should apply temporarily to "harbors, rivers and inland waters." Here again is the customary distinction between high sea and other waters.

APPENDIX C—Decisions as to Meaning of "Sea"

1) *The Harriet* (CC Me. 1840) 11 F. Cas. 588: Mr. Justice Story held that a vessel was not "at sea" until she was on the ocean; that is, "beyond the limits of the port or harbor," the port in that instance being Saint George, Maine, about 15 miles inside the headlands. Note the previous discussion of this case in connection with the regulations of 1857 (supra, p. 21). The next four cases, decided from 1818 to 1829 by the same justice (whose use of the term "we" in several of the opinions indicates presence of another judge), make the same distinction between inland waters and "sea."

2) *The Abby,* 1 F. Cas. 26: A vessel is said to have proceeded "out to sea" from a sound near Portland Maine.

3) *US v. Haines,* 26 F. Cas. 62: The vessel is stated by the reporter to have "dropped down to the *outer harbor* of Boston, called 'Nantasket Roads,' to proceed *to sea;* . . . But the master, before actually proceeding *to sea,* was taken ill; . . . Orders were given by the new master to weigh anchor and proceed *to sea.*" The court used these expressions (p. 64, col. 1): "It might occur *at sea,* or in a foreign port," and:

> The ship might, if the master should die *on the sea,* be exposed to the most imminent perils.

4) *US v. Hamilton,* 26 F. Cas. 93: It is stated that the crew had been requested "to unmoor the ship, which then lay in the main stream of Salem *harbor,* that she might proceed *to sea.*" The opinion contains the expression

"whether the offences be committed *in port or on the seas.*"

5) *US v. Gardner,* 25 F. Cas. 1258: It was stated in the report of this case that a ship which was in Boston *harbor* was "*ready for sea*" and about to "get under weigh *for sea* for the voyage."

Three later decisions harmonious with the foregoing are the following:

6) *US v. New Bedford Bridge* (CC Mass. 1847) 27 F. Cas. 91: Circuit Justice Woodbury said (p. 120) that "in crimes, 'the sea,' or 'the high seas,' or 'the ocean,' mean much the same (6 Dane, Abr. 348)."

7) *The Helen Brown* (DC Mass. 1886) 28 F. 111: Libelants contended that a vessel making trips between Boston and Lynn did not "depart from the port" of Boston. Judge Nelson said:

> A vessel departs from her port when she goes to sea. When she leaves her harbor, and enters upon the high seas, whether on a voyage to another port, or in the prosecution of some business on the ocean, such as towing, fishing, rendering assistance, or the like, she is, in a legal as well as in a nautical sense, at sea, as distinguished from being in port. To "depart from port," to "leave port," to "go to sea," are phrases which, in popular speech, have the same signification. I am of opinion that it is in this sense that the words "depart from the port" are used in the statute. US v. Grush, 5 Mason 290, 26 F. Cas. 48; The Harriet, 1 Story 251, 11 F. Cas. 588. In going to Lynn the Helen Brown went outside of the headlands and lighthouses which mark the outward geographical limits of Boston Harbor, and entered Mas-

sachusetts Bay. ***She was then upon the high seas; she had left her port and had gone to sea. . . .***

8) *The Satellite* (DC Mass. 1910) 188 F. 717, 721: A vessel which had left Boston Harbor and was in that portion of the open sea known as Massachusetts Bay, was said by Judge Dodge, on the authority of *The Helen Brown,* supra, to have "gone to sea."

During the period here under consideration three like rulings were made by the district court for the southern district of New York, by Judge Betts, also a later one by Judge Hough, as follows:

9) *The Wave,* 1831, 29 F. Cas. 453: A vessel in distress, about a mile from Sandy Hook beach, in New York lower bay, was said by Judge Betts to have been "*infra fauces terrae* or on waters within the territorial limits of New York or New Jersey" (p. 461, col. 1). He also spoke (p. 459, col. 2) of the duty "to pilot vessels from New York *to sea* and *from sea* to New York by the way of Sandy Hook."

10) *Lears v. One Cask Oil,* 1842, 15 F. Cas. 105: "At sea" used repeatedly in the sense of high sea.

11) *The John Gilpin,* 1845, 13 F. Cas. 675: Contains two specific indications (pp. 675-6) that a vessel in New York lower bay had not got "*out to sea.*"

12) *US v. Newark Meadows* (CC SD NY 1909) 173 F. 426: Judge Hough recognized Sandy Hook as one of the *fauces terrae* for New York Bay.

13) *US v. Wiltberger,* 1820, 5 Wheat. 76: Chief Justice Marshall discussed at length provisions for crimes com-

mitted upon "the land or seas," "the land or the sea," and "on the land or at sea." The Attorney General had argued that the words "river, haven, basin, or bay," should be read into those provisions, but the court seemed strongly of opinion that this could not be done (pp. 101-2), thus indicating that "seas," "the sea," and "at sea" meant high sea. Also, the chief justice used the term "seas" as a synonym for "high seas" (pp. 100-4).

14) *US v. Klintock,* 5 Wheat. 144, 149: "Captures at sea" used in the sense of "high sea" (Chief Justice Marshall).

15) *US v. Smith,* 5 Wheat. 153, 154, 155, 161, 162, 163: "To sea," "on the seas," and "upon the sea," used five times in the sense of "high sea" (Justice Story).

16) *US v. Pirates,* 5 Wheat. 184, 194, 196, 220: "At sea," "on the seas," four times used as though meaning "high seas." Also, "river, haven, basin, or bay" was distinguished from "the seas" (Justice Johnson).

17) *US v. Holmes,* 5 Wheat. 412, 413, 418: Four instances of like use (Justice Washington).

18) *M'Donough v. Dannery,* 1796, 3 Dall. 188: "Sea" and "high sea" are used synonymously in statement (p. 189) and argument (p. 196).

19) *Purviance v. Angus* (Penn. 1786) 1 Dall. 180, 181, 489, 490: "At sea," "high seas," and "on the sea" used synonymously.

20) *Southern SS Co. v. NLRB,* 316 ~~MS~~ US 31: This very recent decision construed a statute relating to "mutiny on the high seas, or any other waters." The court used

the term "at sea" four times in the sense of "high sea."

21) *The Active* (DC Oreg. 1866) 1 F. Cas. 64, 68: Judge Deady used the term, "between the shore line and a point four leagues at sea."

22) *The Pilot* (CCA 9—1892) 50 F. 437: A vessel from San Francisco had come through Fuca Strait to Port Angeles, from whence, as said by the court (p. 438), it was to be towed to a British port, "thence back, through the straits, *to the sea.*" Also, the court mentioned a vessel on a river between Georgia and Florida as having "proceeded *out to sea* and to a Spanish port" (p. 439).

23) *SS Thomas Jefferson,* 1825, 23 US 428: In reference to a contract for services of a seaman, it was said by Mr. Justice Story that admiralty could not exercise jurisdiction (p. 429):

> Except in cases where the service was substantially performed, or to be performed on the sea, or upon waters within the ebb and flow of the tide. . . . We say the service was to be substantially performed on the sea, or on tide water.

If this distinguished admiralty jurist had regarded "sea" as including "waters within the ebb and flow of the tide," he would not have found it necessary to make verbal distinction between them in two consecutive sentences.